HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2129 OF 2005.

Sarang Arvind Goswamy. ...Applicant.

V/s.

State of Maharashtra through
P.I.Camp Police Station, Pune. ...Respondent

Shri Uday Warunjikar, advocate for applicant.

Shri V.B.Konde-Deshmukh, APP for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 7, 2005

P.C. :-

1. Heard the learned counsel for the parties.

2. Perused the record.

3. This application takes exception to the order passed by the 4th Additional Sessions Judge, Pune dated 14th March, 2005, cancelling bail granted in favour of the applicant in connection with the C.R.No.212 of 2004. The principal reason, for which bail granted in favour of the applicant has been cancelled at the instance of the prosecution, is that, subsequent to the order of bail, further offence has been added against the applicant in the same C.R.No.212 of 2004 registered

by P.I.Camp Police Station, Pune invoking provisions of special enactment namely Maharashtra Control of Organised Crime Act.

4. The prosecution moved the Sessions Judge for cancellation of the bail already granted in favour of the applicant on the assertion that as the provisions of Special enactment have been applied against the applicant, the earlier bail order cannot continue and the same be cancelled in view of the stringent provisions of section 21 of the MCOC Act. The stand taken on behalf of the prosecution found favour with the Sessions Court and the bail order which was operating in favour of the applicant came to be cancelled.

5. Mr.Warunjikar, the counsel for the applicant has placed reliance on several decisions to contend that once bail is granted, the same can be cancelled only in terms of the settled principles and not otherwise. According to him, posterior application of provisions of MCOC Act in same C.R. pending against the applicant, by itself, can not be the basis to cancel the bail granted in favour of the applicant. He placed reliance on the following decisions.

(1) 1977 Cri.L.J.1461, (Allahabad High Court), Maiku V/s State.

(2) 1977 Cri.L..104(Gujarat High Court), The State of Gujarat V/s. Hirasing Kesarising Solanki.

(3) AIR 1978 Supreme Court 961, State V/s. Sanjay Gandhi.

(4) (1978) 1 Supreme Court Cases 118, Gurcharan Singh and Ors. V/s State..

(5) 1981 Cri.L.J. 1799, Kamal K. Chadha V/s. B.S.Subhedar & Anr.

(6) (1986) 4 Supreme court Cases 481, Raghubir Singh and Ors. V/s State of Bihar.

(7) 1987 All.L.J.682, Smt.Sudha Rani Sharma V/s. Mukesh & Ors.

(8) A.I.R.(88)1951 Madras 1042, The Public Prosecutor V/s.George Williams alias Victor.

(9) 1988 All.L.J.1360, Inder Pal Singh and Ors. V/s.State of U.P.

(10) 1991(1) Bom.C.R.32, The State of Maharashtra V/s.Kirti V.Ambani & Anr.

(11) 1992 Supreme Court Cases (Cri)870, Aslam Babalal Desai V/s. State of Maharashtra.

(12) 1995 Cri.L.J.184, State & Ors. V/s.E.Veeramani.

(13) 1999 Cri.L.J.4063, Subhendu Mishra V/s.Subrat Kumar Mishra.

6. The above said decisions expound the general principles that ought to govern consideration of the prayer for cancellation of bail. It is not necessary to reproduce the general principles stated in the

aforesaid decisions which are too well established. Although several authorities have been pressed into service, however, to consider the issue in the present case only four decisions may be of some relevance. For, the issue is whether posterior application of provision of MCOCA to the pending C.R. can be the sole basis to cancel the bail. We shall now advert to decision reported in **1977 Cr.L.J.1401, Allahabad High Court**, wherein it is observed that consideration of material for the purpose of cancellation of bail relates only to discovery of subsequent new material which was not already available to the prosecuting agency. It is further observed that it would not in any manner tantamount to subsequent consideration of the material if already existing on the record. Reference can also be made to the another decision of Allahabad High Court reported in **1988 All L.J.1360,** which had occasioned to deal with the situation wherein after release on bail, further offence was added to the pending C.R. against the accused. Perhaps this is the nearest case to the facts of the case on hand. However, this decision deals with the newly added offence under the "ordinary law". The Allahabad High Court while considering the matter, in paragraph 4, took the view that merely because another offence has been added to the pending C.R. that cannot be the

basis for the accused to furnish fresh bail bond. It is observed that fresh bonds have to be filed but the fact remains that unless there is charge of misuse or abuse of bail granted, the accused should not be taken into custody unless opportunity to file fresh bonds is extended to him.

7. Reference can also be made to another decision vehemently pressed into service by the applicant reported in **1995 Cr.L.J. 184**. The Madras High Court has observed that past criminal record which could be considered by the court while examining the earlier bail cannot be the basis to cancel the bail at the subsequent point of time. However, it is only when evidence regarding misuse of bail is produced, the question of cancellation of bail would arise. Strong reliance has been also placed on the decision of Supreme Court reported in **1999 Cri.L.J.4063**. It is observed that the Cou**rt cannot** cancel bail in mechanical manner but has to adhere to principles for cancellation of bail established by reported decisions.

8. Relying on the aforesaid Judgments, it is contended that in the present case, the prosecution was aware about the pending criminal cases against the applicant and that material was not relied upon on the

earlier occasion. If it is so, it cannot be made basis for cancellation of bail. It is contended that offence under provisions of MCOC Act is invoked mainly on the basis of the offences already registered against the applicant of which cognizance is taken by the Court of competent jurisdiction. Accordingly, as the MCOCA offence is founded on past criminal record of the applicant, that cannot be the basis to cancel the bail operating in favour of the present applicant.

9. The argument,though attractive at the firt blush, in my opinion, is devoid of substance. In the present case, the applicant has been arrested in connection with the C.R., which was originally registered for offences under Indian Penal Code and Arms Act, which is the ordinary law. The applicant was ordered to be released on bail by order dated 4th February, 2005 before filing of the chargesheet and investigation was in progress. It is not necessary to go into the justness of the reasons recorded by the Lower Court in ordering release of the applicant on bail. Incidently, it may be mentioned that the court has observed that investigation is already completed and the presence of the applicant was no more required by the police for the purpose of investigation and that the weapons in questions were already recovered from the accused. The

fact that earlier C.Rs. were already registered against the applicant, though according to the Public Prosecutor was brought to the notice of the concerned Judge, is not adverted to in the impugned order while releasing the applicant on bail. In that sense, it is possible to proceed on the basis that the relevant material which was available was not considered on the earlier occassion while bail was granted to the applicant. In this backdrop, it is contended on behalf of the Applicant that the material which was otherwise available to the prosecution and not produced, that cannot be the basis for cancellation of bail. This submission overlooks the fact that the offence which has been added to the pending C.R. against applicant is under the special enactment namely, M.C.O.C. Act. The said offence could be registered by the police only after formal approval is given by the competent authority. Proposal to give such formal approval was moved by the investigating agency only on 4th February, 2005. The applicant was already ordered to be released on bail before the proposal for formal approval was accorded. The applicant was directed to be released on bail by order dated 4th February, 2005, whereas the formal approval for recording information regarding offences under provisions of M.C.O.C. Act was granted by the Competent authority on 10th February, 2005. It

is only upon grant of such formal approval that the offence under MCOC Act could be registered and investigated into and not otherwise. This is obviously a subsequent development which can be and ought to be considered by the court for cancellation of bail. The fact that the offences under the provisions of MCOCA are founded on the previous offences will make no difference. Be that as it may, one more offence has been registered against the applicant on 21st February, 2005 with the Bund Garden Police Station, Pune. Accordingly, the prosecution approached the court for cancellation of bail by a formal application on 25th February, 2005 on the assertion that now provisions of M.C.O.C.Act have been applied against the applicant, as a consequence of which the bail in favour of the applicant relating to the offences under Indian Penal Code and Arms Act will be of no avail. Instead the applicant will have to be taken into custody in relation to the newly registered offence under M.C.O.C.Act. And the Applicant can be released on bail only if the Applicant was to satisfy the rigours of the provisions of the Special enactment. This stand of the prosecution has found favour with the Sessions Court as can be seen from the order which is impugned in this application. If this is the course adopted in the present case, in my opinion, it is not only because of

the subsequent development which has come on record but also by necessity of law, in view of the stringent provisions of M.C.O.C.Act. It is not in dispute that although the order of bail was granted in favour of the applicant but admittedly, he has not availed of that bail and that he is in custody in connection with some other offence.

10. Viewed in this perspective, I see no substance in this application. Accordingly, this application is dismissed and the order passed by the IV Additional Sessions Judge, Pune dated 14th March, 2005 is upheld.

11. At this stage, Shri Warunjikar, the learned counsel for the applicant prays that operation of this order as well as order passed by the Sessions court be stayed for a period of 6 weeks. I see no reason to accept this submission, having regard to the seriousness of the offence. Hence this prayer is rejected.